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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,597	01/04/2002	Neal W. Luginbill	HRA-12807	6360

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EXAMINER	
HONG, HARRY S	

ART UNIT	PAPER NUMBER
2614	

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/037,597	LUGINBILL ET AL.	
	Examiner	Art Unit	
	Harry S. Hong	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 March 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn (US 6,543,637 B1; previously cited and applied) in view of Wakefield (5,745,565; previously cited and applied).

Regarding claim 1, Osborn shows a cup holder comprising:

An open topped outer member (12) that is secured to a support (col. 3, lines 38 - 62); an open topped inner member (14) that is slidably received and secured to the outer member (12);

the outer member (12) is adapted to receive a cup having a first size when the inner member is removed; and

the inner member (14) is adapted to receive a cup having a second size.

The front walls of the inner and outer members have an elongated opening through which a front of the cup is visible (clearly depicted in FIG. 1).

Osborn does not teach the cup holder holding a phone. However, Wakefield plainly teaches that cup holders themselves are and can be used to hold phones; see column 2, lines 40-45 (emphasis added). Therefore, it would have been obvious even to one of ordinary skill in the art at the time of the invention to modify the cup holder of Osborn to also hold phones as clearly taught and motivated by Wakefield. Thus when a phone is inserted into the cup holder of Osborn, the front of the phone would be visible through the elongated opening of the front wall of the inner and outer members.

5. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn in view of Wakefield as applied to claim 1 above, and further in view of Klammer et al. (Klammer; US 6,263,080 B1; previously cited and applied).

Osborn in view of Wakefield differs from the claimed invention in that it does not show an opening on the bottom wall. However, Klammer teaches a phone holder providing an opening on the bottom wall (see 7). Hence, it would have been obvious for one of ordinary skill in the art to modify Osborn in view of Wakefield with an opening on

the bottom wall as taught by Klammer; such modification would enable the passage of a cable as it is commonly done in phone holders (col. 4, lines 39-40 in Klammer).

Regarding claim 4, Osborn in view of Wakefield and further in view of Klammer teaches a friction fit. However, the difference between snap fit and friction fit are only a matter of clear design choice that does not involve a level of patentability. And for any snap fitting, some type of snap ears would have to be required. Otherwise there would be no snap fit.

6. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn in view of Wakefield as applied to claim 1 above, and further in view of Klammer as applied to claims 3 and 4 above, and further in view of Hirai et al. (Hirai; 6,084,963; previously cited and applied).

Osborn in view of Wakefield and further in view of Klammer differs from claim 5 with respect to the alignment ribs and slots. However, Hirai teaches a system for nesting a phone holder into an outer casing with alignment ribs and slots (see 121 and 122 in FIG. 10). Therefore, it would have been obvious even to one of ordinary skill in the art at the time of the invention to incorporate alignment ribs and slots into Osborn in view of Wakefield and further in view of Klammer in order to nest the holders such that the openings in the front wall are aligned.

The rims of claim 6 are plainly taught by Osborn.

7. Claims 7-9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn in view of Wakefield as applied to claim 1 above, and further in view of Hecht et al. (Hecht; 5,848,820; previously cited and applied).

Osborn in view of Wakefield differs from the claimed invention in that it does not explicitly mention a panel assembly pivotally movable between a closed position and an open position wherein the panel is disposed "generally" vertically in the closed position. However, Hecht plainly shows such a panel assembly (the claimed panel assembly reads on the tray 26 in Figs. 2 and 3 not on the seat cushion 22) that is pivotally movable between a closed position (Fig. 2) and an open position (Fig. 3), wherein the tray is disposed "generally" vertically in the closed position. The seat cushion of Hecht can always remain open. Hecht also plainly teaches that the cup holder is movable with the tray between open and closed positions and the cup holder is accessible when the tray is in an open position and inaccessible when the tray is in a closed position. Hence, it would have been obvious for one of ordinary skill in the art to incorporate Osborn in view of Wakefield into a pivotal panel as taught by Hecht, such that the modification allows the system to be stored in a storage bin when not in use.

Regarding claim 8 see tabs (48 on both side of 4) for mounting in Wakefield.

8. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn in view of Wakefield as applied to claim 1 above, and further in view of Hecht as applied to claims 7-9 above, and further in view of Klammer.

With respect to claims 10 and 11, see rejections to claims 3 and 4 above.

9. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn in view of Wakefield as applied to claim 1 above, and further in view of Hecht as applied to claims 7-9 above, and further in view of Klammer as applied to claims 10 and 11 above, and further in view of Hirai.

With respect to claims 12 and 13, see rejections to claims 5 and 6 above.

Since these new grounds of rejection are all obviousness rejections, the applicants are again respectfully reminded that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Response to Arguments

10. Applicant's arguments with respect to claims 1 and 3-14 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry S. Hong whose telephone number is (571) 272-7485. The examiner is normally off on Wednesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing F. Chan can be reached on (571) 272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Harry S. Hong

Harry S. Hong
Primary Examiner
Art Unit 2614

May 28, 2006